



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

JUN 06 2013

1200 New Jersey Avenue, SE
Washington, DC 20590

CERTIFIED MAIL—RETURN RECEIPT REQUESTED
or ELECTRONIC MAIL

Michael Morisy
Muck Rock News
Department MR 3324
P.O. Box 55819
Boston, MA 02205-5819

RE: Freedom of Information Act (FOIA) Request #ES13-001475

Dear Mr. Morisy:

This responds to your March 12, 2013 FOIA request addressed to the Department of Transportation seeking copies of contracts with Booz Allen Hamilton over the past 5 years, as well as any final reports generated and delivered by Booz Allen Hamilton to the agency over the past 5 years. Your request was forwarded to the National Highway Transportation Safety Administration (NHTSA) for processing.

On May 15, 2013, pursuant to 49 CFR Part 512, Booz Allen Hamilton Inc. submitted a request for confidential treatment for portions of NHTSA's contract #DTNH22-12-C-00278, Blue Ribbon Panel on 911 Funding and #DTNH22-06-D-00039, Behavioral, Technological, and Human Factors Research for Traffic Safety. Information subject to a request for confidential treatment is deemed confidential until the Office of Chief Counsel makes a determination regarding such confidentiality. See 49 CFR § 512.20. I note that NHTSA has a substantial backlog of requests for confidential treatment that will take several months to resolve.

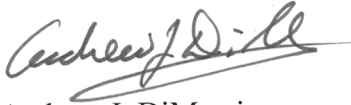
In order to expeditiously comply with your request, we have enclosed the public versions of the requested contracts as submitted by Booz Allen Hamilton. Please let us know if this response meets your current needs.

Pursuant to the provisions of 49 CFR Part 7, there is no charge for this response.

I am the person responsible for this decision. If you wish to appeal this decision you may do so by writing to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W41-227, Washington, DC 20590. An appeal must be submitted within 30 days after you receive this determination. It should

contain any information and argument upon which you rely. The decision of the Chief Counsel will be administratively final.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Andrew J. DiMarsico", with a horizontal line drawn through the middle of the signature.

Andrew J. DiMarsico
Senior Attorney

Enclosures

Booz Allen Hamilton Inc.
8283 Greensboro Drive
McLean, VA 22102

Tel 1-703-902-5000
Fax 1-703-902-3333

www.boozallen.com

May 13, 2013

Chief Counsel of the National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Response to NHTSA FOIA Request #ES13-001475

Reference: Contract Number DTNH22-06-D-00039, Behavioral, Technological, and Human
Factors Research for Traffic Safety

Dear Sir or Madam:

This letter is submitted in response to your letter dated April 24, 2013, which was received by the undersigned at Booz Allen Hamilton Inc. (Booz Allen) on May 1, 2013 in hardcopy. The letter advised Booz Allen of a Freedom of Information Act (FOIA) request received by the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA) and requested Booz Allen to provide redactions to the proposed release of the referenced contract. Booz Allen provides the redactions in the enclosed documents and the basis of the redactions below.

It is Booz Allen's position that the redacted portion of the contract contain trade secrets, proprietary and confidential commercial and financial information, and that such information was intended only for Government.

Booz Allen has reviewed the above referenced contract and redacts labor categories not specified in the request for proposal for this contract and hours and labor rates. Enclosed are Booz Allen's labor rates and hours with recommended denial actions/redactions in in **black** boxes in the redacted copies and in **red brackets** in the bracketed copies. The rationale for these redactions falls directly under U.S. C. § 552(b)(4), ("Exemption 4"), which provides for withholding information related to trade secrets, commercial or financial information of a privileged or confidential nature which is likely to cause substantial harm to the competitive position of the source providing the information or impair some other legitimate Government interest. We are requesting these redactions because release of this information would jeopardize Booz Allen's competitive position on future work and would have a substantial harmful effect on its competitive position in the marketplace.

Under Exemption 4, agencies are prohibited from releasing "trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential." 5 U.S.C. §

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OR OTHER CONFIDENTIAL INFORMATION FURNISHED ON A CONFIDENTIAL BASIS THAT IS NOT SUBJECT
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552(b)(4); *see Canadian Commercial Corp. v. Dep't of Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008). Information that is required to be provided to the Government is exempt from release if disclosure is likely to impair the Government's ability to obtain such information in the future or cause "substantial harm to the competitive position of the entity from which the information was obtained." *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Under this legal standard, the information redacted by Booz Allen qualifies for protection under Exemption 4.

A number of courts specifically have recognized that cost and pricing data are protected by Exemption 4 because of the strong likelihood that releasing such information will cause substantial harm to the competitive position of the submitter. In particular, courts have found a likelihood of substantial competitive harm where the cost/price data detail would provide insight into the submitter's overall pricing strategy.¹ In *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 306-07 (D.C. Cir. 1999), the court stated that the disclosure of unit prices is barred where the disclosure would permit underbidding by competitors, or will encourage the submitter's commercial customers to attempt to "ratchet-down" the submitter's prices. Similarly, in *MCI WorldCom, Inc. v. GSA*, 163 F.Supp.2d 28, 30 (D.D.C. 2001), the court found that the disclosure of detailed unit pricing information would result in substantial competitive harm because it would "(1) provide competitors with detailed pricing information that would permit underbidding for government contracts; and (2) allow commercial customers to 'ratchet down' prices once they knew that governmental customers ... were receiving more favorable rates ...". The court held that GSA could not release the contractor's unit pricing data, despite the fact that the contract contained a clause permitting the disclosure of current-year prices, and despite the FAR provision allowing disclosure of unit prices to disappointed offerors. *MCI WorldCom*, 163 F.Supp.2d at 36.

Specifically, detailed breakout of the individual elements of Booz Allen's labor categories not specified in the RFP, Other Labor Categories, loaded fixed labor rates, hours and total cost for the specified period can be used to determine the pricing strategy used by Booz Allen to compete for work under these the referenced contract. In addition, Booz Allen's subcontractor names and rates are considered confidential. Exhibit 1 attached to this letter lists the page numbers of confidential information and all pages in the redacted and bracketed copies have 'CONFIDENTIAL' listed at the top and bottom of each page. Such information is not a component of any published or publicly available price list; instead, this data represents

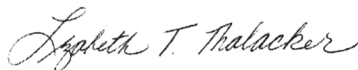
¹ See, e.g., *Raytheon Co. v. Department of the Navy*, 1989 WL 550581, *5-6 (D.D.C. Dec. 22, 1989) (contractor's bottom line prices protected by Exemption 4 where "competitors could derive substantially valid estimations of the components of [the contractor's] bottom line prices and therefore its pricing strategy"); *Cortez III Service Corp. v. NASA*, 921 F. Supp. 8, 13 (D.D.C. 1996) (contractor's G&A rates protected by Exemption 4 because of the competitive harm that would be caused by releasing this information; *Braintree Elec. Light Dep't v. Dep't of Energy*, 494 F. Supp. 287, 290 (D.D.C. 1980) (releasing element of contractor's cost structure would result in substantial competitive harm, because release of such "separate pieces of this financial puzzle would enable competitors, who may somehow have gathered other pieces, to complete the picture.").

confidential cost data that is closely guarded by Booz Allen and is available only to a limited number of personnel having a need to know for purposes of administering the contract, given its obvious strategic importance. Releasing such information would result in substantial competitive harm, because release of such pricing data would enable competitors to calculate the contract rates for this effort and use such information, to Booz Allen's detriment, in future competitions. An indefinite time period is being sought for the confidential information not be disclosed.

The requested data was provided to NHTSA to support the total cost of the contract, and was done so in confidence to demonstrate its ability to perform and meet contractual obligations; it was not intended to be disclosed to competitors or sources outside the U.S. Government. Booz Allen asks that your office carefully consider release of any information other than what Booz Allen has not redacted and provided to you in this package, and that it be afforded the opportunity to again review those, or any other documents you consider releasable before offering them to a requestor. In the event that NHTSA decides to release any of the redacted information, or if you determine that the request encompasses any information beyond that addressed in this letter, Booz Allen requests that it be provided with ten (10) day notice of (i) the proposed date of NHTSA's planned disclosure of such information, (ii) to identify the specific information to be disclosed, (iii) a statement of the reasons why Booz Allen's objections were not honored, and (iv) the manner in which any withheld information will be excised from the document. Booz Allen respectfully makes this request in advance so that it may take whatever action is necessary to protect its legal rights and to prevent the competitive harm that would be caused by disclosure of such sensitive information.

If you have any questions, please contact Mr. Timothy Craven, Sr. Contracts Administrator, Booz Allen Hamilton Inc., 13200 Woodland Park Road, Herndon, VA 20171. Tim's phone number is (703) 984-0449 or by e-mail at Craven_Timothy@bah.com.

Sincerely,



Lizabeth T. Thalacker
Senior Contract Administrator

BOOZ ALLEN HAMILTON INC.

Cc: Timothy Craven, Booz Allen Hamilton

Enclosures – Exhibit 1 - Listing of pages that contain confidential information
1 complete copy of the contract containing confidential information
2 copies of the contract with confidential information bracketed in red
2 copies of the contract with confidential information redacted in black

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EXHIBIT 1

The following pages are considered to contain confidential information:

Page 1, Standard Form 26 – Total Amount of Contract

Page 2 – B.2 – Amount reflects Total Amount of Contract on SF26

Pages 1 and 2, Standard Form 30, Amendment/Modification 0004 – Funding amount

Page 1, Standard Form 30, Amendment/Modification 0001 – Subcontractor name, labor category and rates

Page 2, Standard Form 30, Amendment/Modification 0001 – Subcontractor rate

Pages i, ii, iii, iv, and v, Attachment 1- Ceiling price, labor rates, Other Labor Categories not listed in RFP, subcontractor names and rates

Pages vi, vii, viii, ix, and x, Attachment 1- Ceiling price, labor rates, Labor Categories and Other Labor Categories not listed in RFP, and subcontractor names and rates

Booz | Allen | Hamilton

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McLean, VA 22102

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www.boozallen.com

2013 MAY 15 A 10:35

May 13, 2013

Chief Counsel of the National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Response to NHTSA FOIA Request #ES13-001475

Reference: Contract Numbers DTNH22-12-C-00278, Blue Ribbon Panel on 911 Funding

Dear Sir or Madam:

This letter is submitted in response to your letter dated April 24, 2013, which was received by the undersigned at Booz Allen Hamilton Inc. (Booz Allen) on May 1, 2013. The letter advised Booz Allen of a Freedom of Information Act (FOIA) request received by the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA) and requested Booz Allen to provide redactions to the proposed release of the referenced contract. Booz Allen provides the redactions in the enclosed documents and the basis of the redactions below.

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Booz Allen has reviewed the above referenced contract and redacts the hours and labor rates. Enclosed are Booz Allen's labor rates and hours with recommended denial actions/redactions in **black boxes** in the redacted copies and in **red brackets** in the bracketed copies. The rationale for these redactions falls directly under U.S. C. § 552(b)(4), ("Exemption 4"), which provides for withholding information related to trade secrets, commercial or financial information of a privileged or confidential nature which is likely to cause substantial harm to the competitive position of the source providing the information or impair some other legitimate Government interest. We are requesting these redactions because release of this information would jeopardize Booz Allen's competitive position on future work and would have a substantial harmful effect on its competitive position in the marketplace.

Under Exemption 4, agencies are prohibited from releasing "trade secrets and commercial or financial information obtained from a person [that is] privileged and confidential." 5 U.S.C. § 552(b)(4); see *Canadian Commercial Corp. v. Dep't of Air Force*, 514 F.3d 37, 39 (D.C. Cir.

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ES13-002130

2008). Information that is required to be provided to the Government is exempt from release if disclosure is likely to impair the Government's ability to obtain such information in the future or cause "substantial harm to the competitive position of the entity from which the information was obtained." *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Under this legal standard, the information redacted by Booz Allen qualifies for protection under Exemption 4.

A number of courts specifically have recognized that cost and pricing data are protected by Exemption 4 because of the strong likelihood that releasing such information will cause substantial harm to the competitive position of the submitter. In particular, courts have found a likelihood of substantial competitive harm where the cost/price data detail would provide insight into the submitter's overall pricing strategy.¹ In *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 306-07 (D.C. Cir. 1999), the court stated that the disclosure of unit prices is barred where the disclosure would permit underbidding by competitors, or will encourage the submitter's commercial customers to attempt to "ratchet-down" the submitter's prices. Similarly, in *MCI WorldCom, Inc. v. GSA*, 163 F.Supp.2d 28, 30 (D.D.C. 2001), the court found that the disclosure of detailed unit pricing information would result in substantial competitive harm because it would "(1) provide competitors with detailed pricing information that would permit underbidding for government contracts; and (2) allow commercial customers to 'ratchet down' prices once they knew that governmental customers ... were receiving more favorable rates ...". The court held that GSA could not release the contractor's unit pricing data, despite the fact that the contract contained a clause permitting the disclosure of current-year prices, and despite the FAR provision allowing disclosure of unit prices to disappointed offerors. *MCI WorldCom*, 163 F.Supp.2d at 36.

Specifically, detailed breakout of the individual elements of Booz Allen's estimated hours, Loaded Fixed Labor cost, Total Cost amounts, Indirect Cost Rates and Total Indirect Costs for Materials and ODCs, labor categories, loaded fixed labor rates, hours and total cost for each labor category for the specified period, and the total amount and funding of contract can be used to determine the pricing strategy used by Booz Allen to compete for work under these the referenced contract.

In addition, key personnel information is considered confidential. Exhibit 1 attached to this letter lists the page numbers of confidential information and all pages in the redacted and bracketed

¹ See, e.g., *Raytheon Co. v. Department of the Navy*, 1989 WL 550581, *5-6 (D.D.C. Dec. 22, 1989) (contractor's bottom line prices protected by Exemption 4 where "competitors could derive substantially valid estimations of the components of [the contractor's] bottom line prices and therefore its pricing strategy"); *Cortez III Service Corp. v. NASA*, 921 F. Supp. 8, 13 (D.D.C. 1996) (contractor's G&A rates protected by Exemption 4 because of the competitive harm that would be caused by releasing this information; *Braintree Elec. Light Dep't v. Dep't of Energy*, 494 F. Supp. 287, 290 (D.D.C. 1980) (releasing element of contractor's cost structure would result in substantial competitive harm, because release of such "separate pieces of this financial puzzle would enable competitors, who may somehow have gathered other pieces, to complete the picture.").

copies have 'CONFIDENTIAL' listed at the top and bottom of each page As the courts have recognized, information such as this, which is "related to the manner in which [the contractor] conducts its business under a contract for professional services," is protected from release under Exemption 4 since the contractor would "clearly . . . be injured if [its competitors] could learn this information." *Professional Review Organization of Florida, Inc. v. Dep't of Health and Human Services*, 607 F. Supp. 423, 425-26 (D.D.C. 1986).² To avoid this harm, information regarding Booz Allen's personnel should be withheld under FOIA Exemption 4.

In total, the information Booz Allen seeks to redact is not a component of any published or publicly available price list; instead, this data represents confidential cost data that is closely guarded by Booz Allen and is available only to a limited number of personnel having a need to know for purposes of administering the contract, given its obvious strategic importance. Releasing such information would result in substantial competitive harm, because release of such pricing data would enable competitors to calculate the contract rates for this effort and use such information, to Booz Allen's detriment, in future competitions. An indefinite time period is being sought for the confidential information not be disclosed.

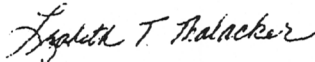
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² See also, e.g., *Audio Technical Servs. Ltd. V. Department of the Army*, 487 F. Supp. 779, 782 (D.D.C. 1979) (data on key employees protected by Exemption 4 because "disclosure of this type of information would threaten the competitive position of the submitter"); *Rubbermaid, Inc. v. Kleppe*, 1976 WL 731, *2 (D. Md. Nov. 5, 1976) (enjoining disclosure of information concerning contractor's employees, under Exemption 4 because of the likelihood that disclosure would cause competitive harm); *Sea-Land Serv., Inc. v. Morton*, 1976 WL 518, *2-3 (D.D.C. Jan. 28, 1976) (recognizing potential competitive harm that could arise by releasing personnel information).

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National Highway Traffic Safety Administration
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Page 4

If you have any questions, please contact Mr. Timothy Craven, Sr. Contracts Administrator, Booz Allen Hamilton Inc., 13200 Woodland Park Road, Herndon, VA 20171. Tim's phone number is (703) 984-0449 or by e-mail at Craven_Timothy@bah.com.

Sincerely,



Lizabeth T. Thalacker
Senior Contract Administrator

BOOZ ALLEN HAMILTON INC.

Cc: Timothy Craven, Booz Allen Hamilton

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